

BAKER & HOSTETLER LLP

45 Rockefeller Plaza
New York, NY 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David J. Sheehan
dsheehan@bakerlaw.com
Karin Scholz Jenson
kjenson@bakerlaw.com
Edward J. Jacobs
ejacobs@bakerlaw.com
Sarah Jane T.C. Truong
struong@bakerlaw.com

Hearing Date: September 17, 2013
Hearing Time: 10:00 a.m.
Objection Deadline: August 14, 2013
Reply Deadline: August 28, 2013

*Attorneys for Irving H. Picard,
Trustee for the Substantively
Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities
LLC and Bernard L. Madoff*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

No. 08-01789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

**TRUSTEE'S REPLY BRIEF IN SUPPORT OF AMENDED MOTION FOR ORDERS:
(I) ESTABLISHING PROCEDURES FOR THIRD-PARTY DATA ROOMS; AND
(II) MODIFYING THE JUNE 6, 2011 LITIGATION PROTECTIVE ORDER**

Irving H. Picard (the “Trustee”), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”), under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* (“SIPA”), and the substantively consolidated estate of Bernard L. Madoff (“Madoff” and together with BLMIS, the “Debtors”), by and through his undersigned counsel, pursuant to, *inter alia*, section 105(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), and Rules 7016, 7026 and 9006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), hereby submits this reply brief (“Reply Brief”) in support of his amended motion for: (I) an Order Establishing Procedures for Third-Party Data Rooms; and (II) an Order Modifying, in limited fashion, the Litigation Protective Order, dated June 6, 2011 [ECF No. 4137] (the “Amended Motion”).

In support of the Amended Motion, the Trustee respectfully states as follows:

On July 24, 2013, the Trustee filed the Amended Motion respectfully requesting that this Court enter: (1) an Order establishing procedures for electronic data rooms (the “Third-Party Data Rooms”) to house certain documents received by the Trustee, transcripts of examinations conducted pursuant to Bankruptcy Rule 2004, and transcripts of depositions conducted in litigation; and (2) an Order modifying, in limited fashion, the Litigation Protective Order in order to facilitate the establishment and use of the Third-Party Data Rooms (the “Proposed Orders”).¹

In advance of filing the Amended Motion, the Trustee provided a copy of draft versions of the Proposed Orders to counsel for a majority of the Objecting Parties,² and the Proposed

¹ All terms not defined herein shall have such meanings as ascribed to them in the Amended Motion.

² The Trustee negotiated with the following counsel for Objecting Parties in connection with the Amended Motion, and each of the following consented to the Proposed Orders, without waiving any defenses regarding personal jurisdiction: Cleary Gottlieb Steen & Hamilton LLP (on behalf of Citibank, N.A., Citicorp North America, Inc., Citigroup Global Markets Limited, Citi Hedge Fund Services Ltd., Citibank (Switzerland) AG, and Citivic Nominees Ltd.; Thybo Asset Management Limited and Thybo Stable Fund Ltd.; HSBC Bank plc, HSBC Holdings plc, HSBC Securities Services (Luxembourg) S.A., HSBC Fund Services (Luxembourg) S.A., HSBC Institutional Trust Services (Ireland) Limited, HSBC Securities Services (Ireland) Limited, HSBC Bank Bermuda Limited,

Orders submitted to this Court on July 24, 2013 incorporated input the Trustee received from those Objecting Parties. As a result of those discussions, those Objecting Parties did not oppose the relief requested in the Amended Motion.

No objections were filed to the Trustee's Amended Motion by the August 14, 2013 deadline.

After the Trustee filed the Amended Motion on July 24, 2013, a small number of Producing Parties and defendants contacted counsel for the Trustee. Counsel for the Trustee engaged in extensive discussions with these Producing Parties and defendants in order to respond to their inquiries and address their concerns. As a result of these discussions, the Trustee agreed to certain clarifying revisions to the Proposed Orders. In addition, the Trustee agreed to certain additional procedures applicable to the Third-Party Non-Confidential Data Room, which provide Producing Parties with the opportunity to object to the requests for the production of their non-confidential documents out of the Third-Party Non-Confidential Data Room. These revised procedures provide the Producing Parties with greater protection and control over their non-confidential documents, while still enabling defendants in the non-Avoidance Actions to obtain documents that they deem relevant to the adversary proceeding.

The Trustee now respectfully requests that the Court enter the following revised Proposed Orders, which incorporate the above-referenced revisions: (I) an Order Establishing Procedures for Third-Party Data Rooms (attached hereto as Exhibit A); and (II) an Order Modifying, in limited fashion, the Litigation Protective Order, dated June 6, 2011 [ECF No. 4137] (attached

HSBC Institutional Trust Services (Bermuda) Limited, HSBC Securities Services (Bermuda) Limited, HSBC Bank USA, N.A., HSBC Bank (Cayman) Limited, HSBC Private Banking Holdings (Suisse) S.A., HSBC Private Bank (Suisse) S.A., Somers Dublin Limited, Somers Nominees (Far East) Limited); Skadden, Arps, Slate, Meagher & Flom LLP (on behalf of UniCredit S.p.A.); Wachtell, Lipton, Rosen & Katz (on behalf of JPMorgan Chase & Co., JPMorgan Chase Bank, N.A., J.P. Morgan Securities LLC, and J.P. Morgan Securities Ltd.); and Gibson, Dunn & Crutcher (on behalf of UBS AG).

hereto as Exhibit B) (the “Revised Proposed Orders”).³ Those Objecting Parties identified above who consented to the Proposed Orders submitted in connection with the Amended Motion on July 24, 2013 have also consented to the Revised Proposed Orders attached hereto.

For the foregoing reasons, the Trustee respectfully requests that his Amended Motion be granted and that the Court grant the relief sought herein substantially in the form attached hereto as Exhibits A and B.

NOTICE

In accordance with the Notice of the Trustee’s Amended Motion, filed on July 24, 2013, this Reply Brief is filed with the Clerk of the United States Bankruptcy Court, One Bowling Green, New York, New York 10004 without further mailed notice to parties-in-interest.

Dated: New York, New York
August 28, 2013

BAKER & HOSTETLER LLP

By: /s/ David J. Sheehan

David J. Sheehan
Karin Scholz Jenson
Edward J. Jacobs
Sarah Jane T.C. Truong

45 Rockefeller Plaza
New York, NY 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
*Attorneys for Irving H. Picard, Trustee for
the Substantively Consolidated SIPA
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Securities LLC and Bernard L. Madoff*

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³ The revised Proposed Orders contain blacklined edits reflecting the changes made to the Proposed Orders submitted to this Court on July 24, 2013.